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EXAMINER

ROWAN, KURT C

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/753,660
Filing Date: January 09, 2004
Appellant(s): KLEIN, ARNOLD GREGORY

MAILED

OCT 24 2007

GROUP 3600

Arnold Klein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 7, 2007 appealing from the Office action mailed Dec. 12, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant's brief presents arguments relating to failing to provide proper antecedent basis for claimed subject matter and arguments relating to claim 19 being objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct, but it should be pointed out that all the pending claims are listed not just the appealed claims.

(8) Evidence Relied Upon

4800671	OLSON	1/1989
1405822	ERICKSON	2/1922

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 5, and 18 are rejected under 35 USC 102(b) as being anticipated by Erickson.

Claims 3-4 are rejected under 35 USC 103(a) as being obvious over Erickson in view of Olson.

Claim 19 is rejected under 35 USC 103(a) as being obvious over Erickson.

(10) Response to Argument

Applicant argues the intended use of the insect barrier, but Erickson shows the structure to be capable of performing the intended use. As to the "means for friction fitting recited in claim 1, applicant argues that the center mounting of Erickson is too large to friction fit on the hanging rod. However, it should be pointed out that patent drawings are not taken to be drawn to scale unless stated. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the center mounting hole is too large

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to fit a hanging feeder rod 5/32" or smaller) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues that in Erickson, the trap member and paper ring are held in place by a compressive force between the mating parts of the caster assembly, but this force also involves friction between the elements and therefore can be considered as a frictional force. Applicant argues that Erickson shows an assembly of parts and that a typical nectar bird feeder support has no transition feature of assembly of parts, but the nectar bird feeder is not positively claimed.

Applicant argues that Erickson does not provide an enabling disclosure or teaching relating to protecting the adhesively coated surfaces. However, see Figs. 1, 2, and 3 of Erickson which show a concave rim 18 which would protect the adhesive on the underside from water. Applicant argues that Erickson does not specify a non-drying adhesive, but see Erickson, line 58 where Erickson states a moist glue is employed. If the adhesive of Erickson dried, it is not seen how the product would function. Hence Erickson would desire to use a non-drying adhesive. Applicant argues claim 10, but claim 10 has been withdrawn due to a restriction requirement. In regard to claim 19, applicant is correct that the reference applied is Olson, column 4, lines 31-35. Applicant argues that Olson would not desire an elastic band since this would cause the band to bridge over the surface and lose contact with the tree and further that the stretching of the insect trapping band could result in disruption of the insect trapping adhesive 20 and could result in the adhesive running out the recessed groove 15. However, applicant

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has shown no evidence to prove this conclusion. In regards to claims 3-4, applicant argues that in Erickson, the trap member 16 and the paper ring do not seem to be precoated with an adhesive. However, see Erickson in lines 59-80, where it is stated that the adhesive substance may be applied to the paper disk or the ring 20 and the ring may be applied manually to the inner surface of the trap member. It thus appears that there is a precoating and therefore, it would have been obvious to employ a release paper as shown by Olson to prevent the adhesive from sticking to other surfaces. Applicant further argues that the layer of release material in Olson is provided to the contact adhesive not the insect trapping adhesive, but it would have been obvious to provide a release paper to any adhesive surface to prevent the adhesive from sticking to non-target items and to provide ease of use and handling. In response to applicant's argument based upon the age of the reference to Erickson, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kurt Rowan



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